

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DAVID S. CHANEY  
Chief Assistant Attorney General  
3 FRANCES T. GRUNDER  
Senior Assistant Attorney General  
4 JONATHAN L. WOLFF  
Supervising Deputy Attorney General  
5 KYLE A. LEWIS, State Bar No. 201041  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5500  
Fax: (415) 703-5843  
8 Email: Kyle.Lewis@doj.ca.gov

9 Attorneys for Defendants James Tilton, Jeanne  
Woodford, Suzan Hubbard, Anthony P. Kane, Ben  
10 Curry, W. J. Hill, B. Hendrick, and N. Grannis

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 **ARMANDO VINCENT MUNOZ,**

16 Plaintiff,

17 v.

18 **JAMES TILTON, et al.,**

19 Defendants.  
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C 07-3846 JF

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS; MEMORANDUM OF  
POINTS AND AUTHORITIES  
IN SUPPORT**

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3-6, 10, 12, 13, 16

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DAVID S. CHANEY  
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3 FRANCES T. GRUNDER  
Senior Assistant Attorney General  
4 JONATHAN L. WOLFF  
Supervising Deputy Attorney General  
5 KYLE A. LEWIS, State Bar No. 201041  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5500  
Fax: (415) 703-5843  
8 Email: Kyle.Lewis@doj.ca.gov

9 Attorneys for Defendants James Tilton, Jeanne  
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C 07-3846 JF

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT**

21 TO PLAINTIFF ARMANDO VINCENT MUNOZ, IN PRO SE:

22 PLEASE TAKE NOTICE that Defendants James Tilton, Jeanne Woodford, Suzan  
23 Hubbard, Anthony P. Kane, Ben Curry, W. J. Hill, B. Hedrick, and N. Grannis (Defendants)  
24 move this Court to dismiss Plaintiff Armando Vincent Munoz's (Plaintiff) suit under Federal  
25 Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiff fails to state a claim against  
26 Defendants for violation of Plaintiff's First Amendment right to the free exercise of religion and  
27 that Defendants are entitled to qualified immunity. Defendants also move the Court to dismiss  
28 Plaintiff's request for the award of punitive damages.

Defs.' Not. Mot. & Mot. Dismiss; Mem. of P. & A.

*Munoz v. Tilton, et al.*  
C 07-3846 JF

1 This motion is based upon this Notice, the Memorandum of Points and Authorities, the  
 2 Proposed Order, and the pleadings and records on file in this case. In the event that the Court  
 3 denies this motion, in whole or in part, Defendants respectfully request that the Court grant them  
 4 additional time to file a motion for summary judgment.

## 5 MEMORANDUM OF POINTS AND AUTHORITIES

### 6 INTRODUCTION

7 On or about September 25, 2006, personnel working in a mail room at the Correctional  
 8 Training Facility withheld a package of compact discs mailed to Plaintiff who was incarcerated  
 9 there. These compact discs (CDs) were withheld from Plaintiff because they came from an  
 10 organization that was not on the list of approved vendors permitted to deliver materials to  
 11 inmates in the custody of the California Department of Corrections and Rehabilitation (CDCR)  
 12 under established department and facility operating procedures. Plaintiff was informed that he  
 13 was not allowed to receive any CD materials, including these alleged Christian religious CDs,  
 14 from an unapproved vendor, but that he could receive these materials in a written format. When  
 15 Plaintiff was given the opportunity to demonstrate that the practice of his faith was adversely  
 16 affected by CDCR's withholding of the CDs, he was unable to do so. Citing a legitimate  
 17 penological interest in controlling the format in which information enters prison facilities for  
 18 safety and security reasons, CDCR personnel did not release the CDs to Plaintiff.

19 Plaintiff now brings suit against various CDCR officials alleging that they violated his  
 20 First Amendment right to the free exercise of religion by restricting his possession of religious  
 21 materials in prison. However, as the following will demonstrate, Plaintiff was not denied free  
 22 exercise of religion and his suit fails to state a claim under which relief may be granted.  
 23 Furthermore, the defendant prison officials are entitled to qualified immunity and Plaintiff's  
 24 claim for punitive damages against them are without sufficient justification. For these reasons,  
 25 the Court should dismiss Plaintiff's suit or otherwise grant Defendants' requested relief.

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27 ///

28 ///

**STATEMENT OF ISSUES**

**A. Plaintiff's First Amendment Claim Must Be Dismissed as He Fails to State a Claim Under Which Relief May Be Granted.**

The CDs at issue were withheld from Plaintiff because they did not come from an approved vendor as required by established CDCR policy. Plaintiff failed to demonstrate how withholding these CDs under that policy prevented him from engaging in conduct mandated by his faith. Furthermore, CDCR's policy to prevent introduction of materials from non-approved vendors serves a legitimate, reasonable, and constitutional penological interest in ensuring safety and security at its facilities. Should Plaintiff's suit be dismissed under Federal Rule of Civil Procedure Rule 12(b)(6) where Plaintiff failed to state a claim against Defendants for which relief can be granted?

**B. Plaintiff Has No Constitutional Claim Arising From the Handling of His Inmate Grievance.**

Claims by prison inmates based on the denial of or failure to grant administrative appeals are not cognizable in an action for violation of civil rights because there is no constitutional right to a prison administrative appeal or grievance system. Plaintiff's sole allegation concerning certain Defendants is that they failed to take action with respect to his inmate appeals regarding receipt of the CDs at issue. In the absence of any other allegation of wrongdoing by those certain Defendants, should Plaintiff's claims against those personnel involved in the review of his administrative appeals be dismissed under Federal Rule of Civil Procedure 12(b)(6)?

**C. Plaintiff Fails to State a Claim of Supervisor Liability.**

Liability for a violation of Plaintiff's civil rights only attaches to supervisors if they personally participated in the constitutional violation or had knowledge that their subordinates were violating another's constitutional rights and did nothing to prevent it. Apart from allegations regarding their role in promulgating CDCR policies or handling his administrative appeals, Plaintiff has provided no evidence that certain supervisory Defendants knew of any alleged constitutional violations being committed by their subordinates. Where Plaintiff failed to sufficiently plead a claim based on a theory of supervisor liability, should certain Defendants not



1 be held liable and dismissed from this case under Rule 12(b)(6) of the Federal Rules of Civil  
2 Procedure?

3 **D. Defendants Are Entitled to Qualified Immunity.**

4 Plaintiff failed to demonstrate that Defendants violated his First Amendment right to the  
5 free exercise of religion by restricting his possession of religious materials in prison.  
6 Additionally, documents filed by Plaintiff demonstrate that Defendants acted reasonably and  
7 withheld the CDs based on legitimate penological interests. Are Defendants entitled to qualified  
8 immunity where they have not violated Plaintiff's rights and acted reasonably with respect to the  
9 withholding of non-approved materials from him?

10 **E. Plaintiff Fails to Sufficiently Plead His Claim for Punitive Damages.**

11 Plaintiff demands punitive damages for the alleged due process violations committed by  
12 Defendants in their official capacity. However, Plaintiff's complaint fails to allege that  
13 Defendants acted with the requisite evil motive or callous indifference. Should Plaintiff's claim  
14 for punitive damages against Defendants in either their personal or official capacity be dismissed  
15 where these damages are not sufficiently plead?

16 **STATEMENT OF THE CASE**

17 Plaintiff is a prisoner in the California Department of Corrections and Rehabilitation  
18 currently incarcerated at the Correctional Training Facility (CTF), located in Soledad, California.  
19 On July 26, 2007, Plaintiff filed a civil rights complaint under 42 U.S.C. § 1983 in the San  
20 Francisco Division of the United States District Court for the Northern District of California.  
21 (Court Docket (CD) # 1.)

22 Plaintiff alleges violations of his civil rights stemming from events that occurred on or  
23 about September 26, 2006, when a package containing CDs was withheld from Plaintiff. (CD #  
24 1 at 3(b).)<sup>1/</sup> The package intended for Plaintiff was delivered by Abundant Life Four Square  
25 Church, and allegedly contained Christian religious CDs. (*Id.*) Citing penological interests in  
26

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27 1. When possible, citations to documents produced and filed by Plaintiff are made using the  
28 exhibit and page numbering system employed by Plaintiff.

controlling the format in which information enters the institution for safety and security reasons, CDCR requires that all recordings be purchased from an authorized vendor utilizing the inmate purchasing procedure. (CD # 1 at Ex. A, p. 4.) Accordingly, under Article 43, Chapter 5, of the CDCR Departmental Operations Manual (DOM), prison inmates can only receive materials from sources that are listed as departmentally approved vendors.<sup>2/</sup> (CD # 1 at 3(a).) Furthermore, under Operational Procedure # 26 at the Correctional Training Facility, inmates must purchase all CDs from an approved vendor. (CD # 1 at Ex. A, p. 1.) Abundant Life Four Square Church was not on the list of approved vendors, and thus the property room withheld the CDs from Plaintiff. (CD # 1 at 3(b); Ex. A, p. 4.)

This Court subsequently screened Plaintiff's Complaint under 28 U.S.C. § 1915A, and found that Plaintiff stated a cognizable claim that Defendants violated his First Amendment right to the free exercise of religion by restricting his possession of religious materials in prison. (CD # 5 at 2.)<sup>3/</sup> Defendants now move to dismiss Plaintiff's suit under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, for a determination that Defendants are entitled to qualified immunity, and that Plaintiff's request for punitive damages is not supported by the allegations of the Complaint.

## ARGUMENT

### I.

#### STANDARD OF REVIEW

Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the claims alleged in the pleadings. A case should be dismissed under Rule 12(b)(6) if it fails to state a claim upon which relief can be granted. *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). A dismissal under Rule 12(b)(6) is proper where there is either a "lack of

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2. Section 54030.7.1 of Article 43 states, in part: "Personal property packages shall be ordered by inmates or third parties via a departmentally approved vendor. A departmentally approved vendor may be chosen by an inmate or third party to provide items for inclusion into a personal property package."

3. The Court did not find that Plaintiff stated a cognizable claim under the Religious Land Use and Institutionalized Persons Act of 2000. (42 U.S.C. § 2000cc.)

1 cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal  
2 theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

3 When assessing the legal sufficiency of a plaintiff's claims, the court must accept as true  
4 all material allegations of the complaint and all reasonable inferences that may be drawn  
5 therefrom. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To assist in its analysis, a court  
6 may consider documents outside of the pleadings in support of a Rule 12(b)(6) motion to dismiss  
7 if the documents are referenced in plaintiff's complaint, are "central" to plaintiff's claim, and  
8 whose authenticity are not at issue. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.  
9 2001) (finding that courts may consider documents which are not physically attached to the  
10 plaintiff's complaint if their authenticity is not contested and the complaint necessarily relies on  
11 them).

12 In a § 1983 action, a plaintiff's allegations must show (1) that the conduct complained of  
13 was committed by a person acting under color of state law; and (2) that the conduct deprived the  
14 plaintiff of a constitutional right. *See Balistreri*, 901 F.2d at 699. Where there is no allegation of  
15 facts which show the violation of a federally protected right, defendants are entitled to prevail as  
16 a matter of law. *See Baker v. McCollan*, 443 U.S. 137, 140 (1979).

## 17 II.

### 18 **PLAINTIFF'S FIRST AMENDMENT RIGHT TO THE FREE** 19 **EXERCISE OF RELIGION WAS NOT VIOLATED BY DEFENDANTS'** **WITHHOLDING OF THE COMPACT DISCS.**

20 To establish that Defendants burdened Plaintiff's First Amendment free exercise right,  
21 Plaintiff must show that he was prevented from engaging in conduct mandated by his faith  
22 without any justification reasonably related to a legitimate penological interest. *See Freeman v.*  
23 *Arpaio*, 125 F.3d 732, 736 (9th Cir. 1997). While inmates maintain their First Amendment rights  
24 to the free exercise of their religion, those rights are necessarily limited by virtue of their  
25 incarceration. *Id.* A prisoner may be inconvenienced in the practice of his faith so long as the  
26 governmental conduct does not prohibit the prisoner from "participating in the mandates of his  
27 religion." *Graham v. C.I.R.*, 822 F.2d 844, 851 (9th Cir. 1987).

28 ///

1 The Ninth Circuit recently recognized that two threshold requirements must be met before  
 2 particular beliefs, alleged to be religious in nature, are accorded First Amendment protection.  
 3 *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). A court's task is to decide whether the  
 4 beliefs avowed are (1) "sincerely held," and (2) "rooted in religious belief." *Shakur*, 514 F.3d at  
 5 884 (quoting *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir.1981)). This "sincerity test" is  
 6 applied to determine whether Plaintiff presents a viable claim challenging a prison regulation  
 7 under the Free Exercise Clause. Nevertheless, even if it is shown that prison officials burdened  
 8 conduct that is mandated by Plaintiff's faith, no violation of Plaintiff's First Amendment rights  
 9 can be made out if the restriction imposed by the state was reasonably related to legitimate  
 10 penological objectives. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner*  
 11 *v. Safley*, 482 U.S. 78, 89 (1987)).

12 **A. Plaintiff's Religion Does Not Mandate that He Receive Religious CDs.**

13 Plaintiff's Free Exercise claim is not viable because his Complaint fails to sufficiently  
 14 allege that receiving religious CDs is necessary for him to practice sincerely held beliefs that are  
 15 rooted in his Christian faith. See *Shakur*, 514 F.3d at 884. Although Plaintiff claims that denial  
 16 of access to the CDs places a substantial burden on his practice of core elements of his religious  
 17 faith, including listening to sermons, studying the Bible, and propagating and teaching others  
 18 about the Christianity (CD # 1 at 3(e); Ex. A, pp. 9-11), neither Plaintiff's brief conclusory  
 19 statement nor his scriptural citations demonstrate that he must listen to CDs as part of his  
 20 religiously mandated practices or that he is precluded him from practicing his faith without them.  
 21 At most, Plaintiff's inability to listen to religious CDs amounts to an inconvenience, not a  
 22 substantial interference with a his religious beliefs. *Shakur*, 514 F.3d at 884. Such an  
 23 inconvenience does not rise to the level of a constitutional violation, and thus the action should  
 24 be dismissed.<sup>4/</sup>

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25  
 26 4. Plaintiff's Complaint asks the Court to take judicial notice of *Jesus Christ Prison Ministry*  
 27 *v. Cal. Dep't of Corrs.* 456 F. Supp. 2d 1188 (E.D. Cal. 2006). However, the decision in that case  
 28 was strictly limited to the Substance Abuse Treatment Facility in Corcoran, California, and the  
 specific plaintiff ministry involved therein. Furthermore, in this instant case, Defendants do not

**B. Even If Receiving Religious CDs is Mandated by Plaintiff's Religion, Defendants' Failure to Allow Plaintiff's Receipt of CDs Does Not Amount to a First Amendment Violation.**

Assuming, for the sake of argument, that CDCR personnel burdened conduct that is mandated by Plaintiff's faith, no violation of Plaintiff's First Amendment rights can be made out if the restriction imposed by the state was reasonably related to legitimate penological objectives. The Supreme Court has held that an inmate's "free exercise right, however, is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security." *O'Lone*, 482 U.S. at 348. Accordingly, courts apply a four-part test to balance the inmate's free exercise right against the state's legitimate penological interests to determine whether a prison regulation is reasonable and constitutional. *Turner*, 482 U.S. at 89.

Under the *Turner* test, courts first examine whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89 (internal quotations omitted). Article 43 of the DOM lists a variety of requirements that approved vendors must comply with, including maintenance of applicable business licenses, employee criminal conviction screenings, unannounced CDCR inspections, specific packaging and mailing guidelines, and other security measures. The obvious purpose of these regulations is to prevent the introduction of contraband or otherwise unwanted material into prison facilities that may affect the safety, security, and efficient operation of prisons. Furthermore, standardized packaging regulations allow for simplified mail service at the large prison institutions, saving time, space, and manpower. *See Ward v. Walsh*, 1 F.3d 873, 877 (9th Cir. 1992) (Defendants had "legitimate interest in running a simplified food service."). These legitimate interests are rationally connected to Article 43 and OP #26, and serve as a justifiable basis to withhold CDs delivered to inmates by non-approved vendors. Thus, the first *Turner* factor weighs in favor of Defendants given that permitting inmates to receive packages only from approved vendors is

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believe that the CDCR and CTF approved vendor policies impinge on Plaintiff's free exercise rights, a threshold questions that was not discussed in *JCPN*. *Id.* at 1201.

1 rationally related to the legitimate penological interests in facility security and simplified mail  
2 service.

3 The second factor of the *Turner* test requires courts to determine whether alternative means  
4 of expressing Plaintiff's religion remain available. *Turner*, 482 U.S. at 90. Thus, where "other  
5 avenues remain available for the exercise of the asserted right, courts should be particularly  
6 conscious of the measure of judicial deference owed to corrections officials in gauging the validity  
7 of the regulation." *Id.* (citations omitted). In this case, CTF has a chaplain, religious chapel, and  
8 library. (CD # 1 at 3(d).)<sup>5</sup> Additionally, Plaintiff was informed that he is allowed to receive  
9 religious materials in written format. (CD # 1, Ex. A at 1, 3, 4.) Furthermore, Plaintiff does not  
10 allege that he is denied any other religious materials, including Bibles, publications, or prayer  
11 books, nor is he prevented from practicing his religion, preaching to others, or congregating with  
12 fellow inmates. In *O'Lone*, the Supreme Court concluded that the regulation at issue was  
13 reasonable where the inmates were permitted to congregate for prayer freely, provided with an  
14 imam who had free access to the prison, and provided with special dining arrangements. *O'Lone*,  
15 482 U.S. at 352. Similarly to the plaintiffs in *O'Lone*, Plaintiff is afforded multiple alternative  
16 means of practicing his religion not affect by the provision of Article 43 or OP # 26, and thus the  
17 second factor weighs in Defendants' favor. *See id.*

18 Under the third *Turner* factor, courts must consider the impact of accommodation on  
19 guards, other inmates, and prison resources. *Ward*, 1 F.3d at 877. Because "few changes will  
20 have no ramifications on the liberty of others or on the use of the prison's limited resources . . .  
21 courts should be particularly deferential to the informed discretion of corrections officials."  
22 *Turner*, 482 U.S. at 90. As discussed above, allowing delivery of CDs from non-approved  
23 vendors to inmates will significantly impact both prison resources and prison officials.  
24 Institutional safety and efficient mail organization weigh strongly in favor of limiting deliveries

25  
26 5. Interestingly, Plaintiff has chosen not to avail himself of the religious services offered at  
27 CTF, claiming that he does not attend the chapel at the institution due to his religious convictions  
28 that the ministry does not function according to Biblical standards. (CD # 1 at Ex. A, p. 11.) By  
doing so, Plaintiff has prevented himself from hearing the word of God preached for a period of  
time. (*Id.*)



1 from these vendors. In terms of impacting other inmates, providing a special class of mail that  
 2 can be received only for religious purposes could engender jealousy and resentment among  
 3 inmates of other faiths who do not have access to the same materials because their religions do not  
 4 have them. Courts have found that preventing inmate jealousy is a legitimate penological  
 5 concern. *See DeHart v. Horn*, 227 F.3d 47, 53 (3d Cir. 2000) (en banc). Thus, the third *Turner*  
 6 factor weighs in Defendants' favor.

7 Lastly under the *Turner* test, courts must look to whether there is an absence of ready  
 8 alternatives which would indicate the regulation's reasonableness. *Turner*, 482 U.S. at 90. A  
 9 ready alternative is one which "fully accommodates the prisoner's rights at *de minimis* cost to  
 10 valid penological interests." *Id.* at 90-91. However, "every conceivable alternative method of  
 11 accommodating the claimant's constitutional complaint" need not be considered by defendant  
 12 prison officials. *Id.* As stated previously, Defendants do provide Plaintiff with a ready alternative  
 13 to religious CDs in the form of a functioning chapel, chaplain, chapel library, freedom of  
 14 association with fellow inmates, and the ability to request any religious materials in written  
 15 format. (CD # 1 at Ex. A, p. 11.) Contrary to the final *Turner* factor, allowing delivery of  
 16 religious CDs from non-approved vendors would come at a cost to CDCR and CTF, likely in the  
 17 form of increased security risks and less efficient mail handling services. *See Williams*, 343 F.3d  
 18 212. Thus, the final *Turner* factor weighs in Defendants' favor.

19 Because all four *Turner* factors weigh in Defendants' favor, Plaintiff's claim that his First  
 20 Amendment right to the free exercise of religion was violated fails, and this suit must be  
 21 dismissed.

### 22 III.

#### 23 **DEFENDANTS HEDRICK, HILL, AND GRANNIS MUST BE DISMISSED** 24 **UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) BECAUSE** 25 **PLAINTIFF'S CLAIMS AGAINST THEM ARISE SOLELY FROM THE** 26 **HANDLING OF HIS INMATE GRIEVANCE.**

27 As stated previously, Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal  
 28 sufficiency of the claims alleged in the pleadings. A dismissal under Rule 12(b)(6) is proper  
 where there is either a "lack of cognizable legal theory" or "the absence of specific facts alleged."

1 under a cognizable legal theory.” *Balistreri*, 901 F.2d at 699.

2 In a § 1983 action, a plaintiff’s allegations must show (1) that the conduct complained of  
3 was committed by a person acting under color of state law; and (2) that the conduct deprived the  
4 plaintiff of a constitutional right. *Id.* at 699. However, inmates do not have a constitutional right  
5 to submit prisoner administrative appeals or inmate grievances. *Ramirez v. Galaza*, 334 F.3d 850,  
6 860 (9th Cir. 2003); *see also Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988).

7 Plaintiff alleges in his Complaint that Defendants Hedrick, Hill, and Grannis failed to take  
8 action when they became aware of Plaintiff’s injuries at CTF, and their omissions were substantial  
9 factors in maintaining the violations of Plaintiff’s right to free exercise of religion. (CD # 1 at  
10 3(g).) In reality, each of these defendants were the officials who investigated or responded to  
11 Plaintiff’s administrative appeals regarding the withholding of the CDs. (CD # 1 at Ex. A, pp. 1,  
12 3, 4.) Plaintiff does not allege any other wrongdoing by these Defendants. Although these  
13 Defendants may have processed Plaintiff’s inmate appeals at the various levels, that fact alone  
14 cannot create a constitutional violation, much less a violation of Plaintiff’s right to free exercise of  
15 religion. Because Plaintiff’s sole allegation concerning Defendants Hedrick, Hill, and Grannis  
16 arises from their handling of his administrative appeal, Plaintiff’s claims against these Defendants  
17 must be dismissed for failure to state a claim upon which relief may be granted. *Ramirez*, 334  
18 F.3d at 860.<sup>6/</sup>

#### 19 IV.

#### 20 **PLAINTIFF HAS FAILED TO ALLEGE THAT DEFENDANTS TILTON, 21 WOODFORD, HUBBARD, KANE, CURRY, HILL, AND GRANNIS ARE 22 LIABLE BASED ON THE THEORY OF SUPERVISOR LIABILITY.**

23 In § 1983 actions, the theories of respondeat superior and vicarious liability do not exist.  
24 As a result, liability under a civil rights claim only attaches to supervisors if they personally  
25 participated in the constitutional violation, or had knowledge that their subordinates were

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26 6. In similar instances, courts have held that “[a]ny claim based on the simple failure to grant  
27 administrative appeals or process them properly is not cognizable in a § 1983 action because there  
28 is no constitutional right to a prison administrative appeal or grievance system for California  
inmates.” *Gonzales v. Woodford*, No. C 04-5447 SI, 2005 U.S. Dist. LEXIS 6621, at \*4 (N.D. Cal.  
Apr. 12, 2005).



1 violating another's constitutional rights and did nothing to prevent it. *Jones v. Williams*, 297 F.3d  
 2 930, 934 (9th Cir. 2002); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Thus, to bring a  
 3 successful § 1983 claim against Defendants Tilton (as Secretary of CDCR), Woodford (as  
 4 Director of CDCR), Hubbard (as Deputy Director of Adult Corrections), Kane (as Warden of  
 5 CTF), Curry (as Warden of CTF), Hill (as Associate Warden of CTF), and Grannis (as Chief of  
 6 Inmate Appeals) (CD # 1 at 2-3), Plaintiff must allege and prove that these Defendants either  
 7 personally committed acts which had a direct causal connection to Plaintiff's alleged  
 8 constitutional violation, or that these Defendants knew of alleged constitutional violations  
 9 committed by their subordinates. *Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir. 1986).

10 Here, however, Plaintiff failed to sufficiently allege any such wrongdoing by Defendants  
 11 Tilton, Woodford, Hubbard, Kane, and Curry. Rather, Plaintiff states that the acts and omissions  
 12 of each of these Defendants in implementing DOM Article 43 were a substantial factor in  
 13 violating Plaintiff's right to free exercise of religion. (CD # 1 at 3(e)-3(g).) This simple assertion  
 14 that supervisory personnel were involved in the promulgation of one Article in the Departmental  
 15 Operations Manual is an insufficient basis upon which to mount a constitutional attack.  
 16 Furthermore, Plaintiff failed to sufficiently allege any wrongdoing by Defendants Hill and Grannis  
 17 to trigger supervisor liability. Plaintiff's allegation that they failed to take action when they  
 18 became aware of Plaintiff's injuries is a similarly inadequate means to implicate a constitutional  
 19 violation on their part. (CD # 1 at 3(g).) In both instances, Plaintiff fails to make a necessary link  
 20 between the Defendants' alleged wrongful conduct and the constitutional violation. *See Watkins*  
 21 *v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998) (Causation may be established only by  
 22 showing that the supervisor set in motion a series of acts by others, which the supervisor know or  
 23 reasonably should have known would cause others to inflict the injury.).

24 The proper standard for a Rule 12(b)(6) dismissal requires the courts to accept as true all  
 25 material allegations in the complaint and construe the complaint in the light most favorable to the  
 26 Plaintiff. *Parks School of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *NL Indus.,*  
 27 *Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). Even when Plaintiff's Complaint is viewed in  
 28 this manner, it fails to allege any constitutional deprivation on behalf of the Defendants. As stated

1 above, Plaintiff has neither alleged nor provided any evidence indicating that Defendants Tilton,  
 2 Woodford, Hubbard, Kane, and Curry had knowledge of any alleged constitutional violations  
 3 being committed by their subordinates or were causally related to those alleged violations.  
 4 Furthermore, as discussed above, Defendants Hill and Grannis cannot be constitutionally liable  
 5 for a deprivation of rights where an inmate's appeal has been denied. *Mann*, 855 F.2d at 640.  
 6 Because Plaintiff failed to sufficiently allege supervisor liability on the part of these Defendants,  
 7 they should be dismissed from this case under Rule 12(b)(6) of the Federal Rules of Civil  
 8 Procedure. *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991).

9 V.

10 **DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.**

11 Dismissal in this case is proper because Plaintiff's Complaint shows on its face that  
 12 Defendants are entitled to qualified immunity. Qualified immunity shields an official from  
 13 liability for civil damages unless that person's conduct violated clearly established law, of which a  
 14 reasonable official would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, it  
 15 gives officials "ample room for mistaken judgments by protecting all but the plainly incompetent  
 16 or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (internal  
 17 quotation marks and citation omitted).

18 Qualified immunity ensures that officials are on notice that their conduct is unlawful before  
 19 they are subjected to suit. *Saucier v. Katz*, 533 U.S. 194, 205–06 (2001). It therefore prevents  
 20 officials from being distracted from their governmental duties or inhibited from taking necessary  
 21 discretionary action. *Harlow*, 457 U.S. at 816. It also prevents "deterrence of able people from  
 22 public service," and can preserve the efficiency of government as the costs, time, and effort  
 23 needed for officials to defend suits can be "peculiarly disruptive of effective government,"  
 24 especially in light of discovery obligations. *Harlow*, 457 U.S. at 817. In reference to prisons,  
 25 qualified immunity allows officials to utilize their expertise—based on years of observation and  
 26 practice—to maintain order without fear of liability for doing what seemed "reasonable" at the  
 27 time. See *Jeffers v. Gomez*, 267 F.3d 895, 910, 917 (9th Cir. 2001). Because qualified immunity  
 28 is immunity from suit rather than a mere defense to liability, its application should be decided

1 early in a case. *Hunter*, 502 U.S. at 227–28.

2 In *Saucier*, the Supreme Court established a two-step sequential test to determine whether a  
3 government official is entitled to qualified immunity. First, a court must decide whether the  
4 alleged facts demonstrate that a government official's conduct may have violated a constitutional  
5 right. *Id.* at 201. If there was no constitutional violation, the government official is entitled to  
6 qualified immunity. *Id.* If a constitutional right could have been violated, the next step is to  
7 determine whether, at the time the alleged wrong was committed, the constitutional right was  
8 clearly established. *Id.* at 201–02. The analysis for determining whether a right is clearly  
9 established is whether a reasonable official would have understood that his or her conduct was  
10 unlawful in the situation. *Id.* at 201–02 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640  
11 (1987)).

12 As discussed above, Plaintiff has not alleged sufficient facts to support a cognizable legal  
13 theory that Defendants violated his First Amendment right to the free exercise of religion by  
14 restricting his possession of religious CDs in prison. Furthermore, the documents filed by  
15 Plaintiff with the Court demonstrate that prison officials did not intend to restrict his access to  
16 religious materials—the prison only withheld CDs being delivered to the facility from a non-  
17 approved vendor in compliance with an established policy. (CD # 1 at Ex. A, pp. 1, 3, 4.) Lastly,  
18 prison officials stated that Plaintiff could receive the content of the religious CDs if they were in a  
19 written format. (*Id.*) These actions demonstrate the constitutionally valid conduct of CDCR  
20 personnel and thus, where there is no violation of a constitutional right, Defendants are entitled to  
21 qualified immunity under the threshold test of *Saucier*. 533 U.S. at 201.

22 Assuming, for the sake of argument, that Defendants violated Plaintiff's First Amendment  
23 right to the free exercise of religion, Plaintiff's allegations show that Defendants acted as  
24 reasonable officials in light of the circumstances. As demonstrated by Plaintiff's Complaint,  
25 Defendants were enforcing an established CDCR policy with the intent of controlling the format  
26 in which information entered CTF for safety and security reasons. (CD # 1 at Ex. A, p. 4.)  
27 Defendants specifically stated that they were not denying Plaintiff information and materials from  
28 the ministry of his choice in a written format, merely that they were withholding CDs delivered to

1 him from a non-approved source. (*Id.*) Moreover, the state of the law at the time when  
2 Defendants acted did not clearly establish that their actions would violate Plaintiff's First  
3 Amendments right to the free exercise of religion. *Saucier* requires this inquiry to "be undertaken  
4 in light of the specific context of the case, not as a broad general proposition." 533 U.S. at 201.

5 Here, Defendants reasonably believed that they were properly enforcing lawful CDCR  
6 policy in withholding CDs delivered to Plaintiff from a non-approved vendor while still allowing  
7 him to obtain his religious materials in written format from otherwise approved vendors. Because  
8 Defendants' conduct was not clearly unlawful and was reasonable, Defendants are entitled to  
9 qualified immunity.

10 **VI.**

11 **PLAINTIFF FAILS TO STATE SUFFICIENT FACTS TO SUPPORT**  
12 **A CLAIM FOR PUNITIVE DAMAGES.**

13 Government officials sued in their official capacities are immune from punitive damages  
14 under 42 U.S.C. § 1983. *Mitchell v. Dupnik*, 75 F.3d 517, 527 (9th Cir. 1996). Thus, Plaintiff is  
15 not entitled to punitive damages against Defendants in their official capacity.

16 A jury may, however, award punitive damages against a Defendant in his individual  
17 capacity when the defendant's conduct is driven by evil motive or intent or when his actions  
18 involve a reckless or callous indifference to the constitutional rights of others. *Dang v. Cross*, 422  
19 F.3d 800, 807 (9th Cir. 2005). However, Plaintiff's complaint fails to allege that Defendants  
20 acted with the requisite evil motive or callous indifference. Therefore, Plaintiff is not entitled to  
21 punitive damages against Defendants in either their personal or official capacity, and Plaintiff's  
22 request for punitive damages must be dismissed.

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CONCLUSION

Altogether, Plaintiff's Complaint fails to state a claim against Defendants for violating his First Amendment right to the free exercise of religion by restricting his possession of religious materials in prison, and should be dismissed under Federal Rules of Civil Procedure 12(b)(6). Moreover, Plaintiff's Complaint fails to state a claim against Defendants Hill, Hedrick, and Grannis for their alleged role in his administrative appeals. Lastly, Defendants are entitled to qualified immunity and are not subject to supervisor liability, and the allegations in the Complaint are insufficient to justify a claim for punitive damages. Based on the foregoing, Defendants request that this Court grant this motion and dismiss this action.

Dated: May 22, 2008

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

DAVID S. CHANEY  
Chief Assistant Attorney General

FRANCES T. GRUNDER  
Senior Assistant Attorney General

JONATHAN L. WOLFF  
Supervising Deputy Attorney General

/S/ KYLE A. LEWIS

KYLE A. LEWIS  
Deputy Attorney General  
Attorneys for Defendants James Tilton, Jeanne Woodford,  
Suzan Hubbard, Anthony P. Kane, Ben Curry, W. J. Hill,  
B. Hedrick, and N. Grannis

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Armando Vincent Munoz v. James Tilton, et al.**

Case No.: **C 07-3846 JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **May 22, 2008**, I served the attached

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; [PROPOSED] ORDER**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Armando V. Munoz (K-30296)  
Correctional Training Facility-North  
P.O. Box 705  
Soledad, CA 93960-0705  
Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 22, 2008**, at San Francisco, California.

R. Panganiban  
Declarant

/S/ R. Panganiban  
Signature